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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,781	10/23/2003	Changyong Lee	4220-123 US	7161

7590 04/18/2006

Diane Dunn McKay, Esq.  
Mathews, Collins, Shepherd & McKay, P.A.  
Suite 306  
100 Thanet Circle  
Princeton, NJ 08540

EXAMINER
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MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/691,781

Applicant(s)

LEE ET AL.

Examiner

Kelly Mahafkey

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/2/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "soaking" in claim 1 is used by the claim to mean "coating with an oil solution" (i.e. exposing the rice to a 0.5% solution of emulsified oil for 3 minutes), while the accepted meaning is "saturation." The term is indefinite because the specification does not clearly redefine the term.

In claim 1, the terms "glutinousness", "fluffiness", and "smooth" in claim 1 are relative terms which renders the claim indefinite. The terms "glutinousness", "fluffiness", and "smooth" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 1 recites the limitation "cooked rice". There is insufficient antecedent basis for this limitation in the claim. Claim 1 refers only to soaking rice while claim 2 refers

specifically to cooking the rice. It is unclear to examiner as to which point in the process the rice is cooked.

Claim 2 is rejected because it is dependant upon claim 1, which was rejected as stated above.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. Claim 3 recites a sterilization process, which occurs 4-10 times repeatedly for 4-8 seconds. Since the sterilization occurs repeatedly, it is unclear to the examiner what the sterilization process entails. It is unclear if the sterilization process is equivalent to a one-time sterilization process, which occurs for 16 to 80 seconds, or if there is a step missing which breaks the sterilization process into 4-10 distinct cycles.

Claim 3 is further indefinite because of the recitation, "...cooked rice in aseptic after carrying out step (b)..." The term aseptic is an adjective and has no standard or other meaning, as defined by the specification, when utilized as a noun.

Claim 3 is further indefinite because of the recitation, "...whereby cooked rice in aseptic package can be obtained." The term "can be" implies that the aseptic packaging is optional, however, the claim also recites "hermetically sealing and packaging the resultant cooked rice in aseptic" which implies that the aseptic packaging is not optional. The metes and bounds of the claim are not clearly defined.

Claim 3 recites the limitation "step (b)" in claim 1. There is insufficient antecedent basis for this limitation in the claim. There is no "step (b)" recited in claim 1. For the purpose of prior art comparison, the claim will be interpreted as reciting "step (a)".

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a).

Meyer et al. (Meyer) discloses of a process for producing a pre-cooked, full moisture shelf-stable long grain rice products (Abstract and Column 1 lines 55-60). Meyer teaches that oil is advantageously present on the cooked or precooked grain. Meyer teaches that the oil includes emulsifiers in order to assist in coating the rice grains. Refer specifically to Column 1 lines 63-67 and Column 2 lines 1-4. In Example

1, Meyer teaches of cooking (i.e. heating up) the long grain rice in a solution with emulsified oil (i.e. the oil solution coated on the rice grains before packaging).

Meyer teaches of coating the precooked rice with oil and of soaking the precooked rice in water (Column 1 lines 63-67 and Column 2 lines 17). Given that the definition of "soaking" encompasses "coating" the rice with the oil solution (see 122 2<sup>nd</sup> rejection), Meyer anticipates the claimed invention. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the emulsified oil in the water that the rice was to soak in (i.e. to soak the rice in a water and oil emulsion). One would have been motivated to do so in order to decrease the processing time (by combining two processing steps into one), thus saving money in the production process.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu et al. (US 3892058) in view of Meyer.

Komatsu et al. (Komatsu) teaches of a process and plastic (i.e. flexible as defined by The American Heritage Dictionary) packaging for high temperature and high pressure short time sterilization (Abstract). Komatsu teaches that the process is to include a temperature of 130-160C, high pressure, and a time of 0.5-15 minutes. Komatsu teaches of aseptically and hermetically sealing and packaging the final product (Column 10 lines 42-67, Column 11, Column 12 lines 1-22, and Column 15 lines 34-60). Komatsu teaches that the process and packaging are to be utilized for food articles that are intended to be highly preservable and that enzymatically brown and lose natural

colors, flavor, and texture upon conventional heat sterilization processes (Columns 17 and 18 *Utility*).

Komatsu is silent to the process as including long grain rice that has been coated or soaked in an emulsified oil solution.

Regarding the food product as long grain rice, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include long grain rice as the food product in the package as taught by Komatsu. One would have been motivated to do so in order to gain the health benefits of long grain rice, such as a food product with an enhanced nutritional profile. Because Komatsu teaches of an invention which is designed specifically for improved shelf stability and rice is a product which is commonly stored for long periods of time, one would have a reasonable expectation of success from the combination.

Regarding the rice as coated in an emulsified oil solution, Meyer teaches that the rice is soaked in water and then advantageously coated with emulsified oil to provide a full moisture shelf stable product with outstanding organoleptic properties. Refer specifically to Abstract, Column 1 lines 29-31 and 55-67, and Column 2 lines 1-26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the process of coating the rice in emulsified oil in view of Meyer. One would have been motivated to do so in order to gain the benefits of an oil emulsion coating on rice, such as a product with outstanding organoleptic properties.

Regarding the rice as soaked in an emulsified oil solution (in the alternative) Meyer teaches that the rice is soaked in water and then advantageously coated with emulsified oil to provide a full moisture shelf stable product with outstanding

organoleptic properties. Refer specifically to Abstract, Column 1 lines 29-31 and 55-67, and Column 2 lines 1-26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the process of coating the rice in emulsified oil in view of Meyer. One would have been motivated to do so in order to gain the benefits of an oil emulsion coating on rice, such as a product with outstanding organoleptic properties. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to include the emulsified oil in the water that the rice was to soak in (i.e. to soak the rice in a water and oil emulsion). One would have been motivated to do so in order to decrease the processing time (by combining two processing steps into one), thus saving money in the production process.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4741911 teaches of that when rice is treated in heat stable packages, it is advantageous to first coat the rice with oil, in order to obtain rice products which can be easily removed (i.e. are not agglomerated).

US 4539212 teaches of sterilization process.

US 3840685 teaches that it is well known to coat with water in oil emulsions after cooking.

The World's Healthiest Foods: Feeling Great teaches of the nutritional benefits of rice.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



4/12/06

Kelly Mahafkey  
Examiner  
Art Unit 1761



**KEITH HENDRICKS**  
**PRIMARY EXAMINER**